



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS TEXAS 75202-2733

November 6, 2017

SENT VIA OVERNIGHT EXPRESS DELIVERY

The Honorable Ken Miyagishima
Mayor, City of Las Cruces
700 North Main
Las Cruces, NM 88001

**Re: Griggs and Walnut Ground Water Plume, Las Cruces, Doña Ana County, NM; CERCLA
Section 106 Unilateral Administrative Order for Operation and Maintenance**

Dear Mayor Miyagishima:

This is to provide the City of Las Cruces (the “City”) with the enclosed unilateral administrative order (the “Order”) issued by the U.S. Environmental Protection Agency (EPA) under Section 106 (42 U.S.C. § 9606) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (CERCLA), 42 U.S.C. Section 9601, *et seq.* The Order requires the City and Doña Ana County (the “County”), under EPA oversight, to operate and maintain the ground water contamination extraction system, including monitoring wells, at the Griggs and Walnut Ground Water Plume Superfund Site (the “Site”), located in the City. The purpose of the response actions required by this Order is to ensure the complete removal of the plume of the hazardous substance perchloroethylene (“PCE”) from the drinking water aquifer that underlies the City. Concentrations of PCE in the aquifer exceed the Maximum Contaminant Level (MCL) established under the Safe Drinking Water Act. The MCL is the maximum permissible level of a contaminant in water which is delivered to any user of a public water system. No one is currently exposed to this PCE due to steps taken by the City and County, but the contaminated ground water plume must be controlled to prevent its spread to uncontaminated parts of the aquifer.

In EPA’s November 2016 Five-Year Review Report for the Site, EPA found that there were shortcomings in the City and County’s evaluation of the effectiveness of the ground water extraction and treatment system, which the City and County constructed under a 2011 EPA order, to clean up the PCE at the Site. Specifically, the City and County had not effectively determined whether the system had attained hydraulic capture of the plume of PCE contaminated ground water underlying the Site—keeping it from polluting unaffected areas. In addition, the City and County had not adequately determined the extent to which the system had reduced the PCE concentrations within the plume to below the MCL. There were other problems with the sampling as well. *See* First Five-Year Review Report for Griggs and Walnut Ground Water Plume Superfund Site Las Cruces, Doña Ana County, New Mexico (EPA September 2016) at, *e.g.*, p. 19. (<https://semspub.epa.gov/work/06/100001210.pdf>).

The City and County have improved sampling recently, however, and the analysis of recent samples shows that the PCE contamination is being controlled for now. Nonetheless, cleanup of the contaminated ground water will take more than a decade; and, to ensure consistency in the protection of this aquifer and to ensure that the work to protect this drinking water is completed, EPA is issuing this Order.

We think you will find that the cleanup work required under the Order is work that we have described in various Statements of Work (SOW) that we have provided before and discussed with you. If there are aspects of the Order, including its SOW, that you believe may not be appropriate, or if you have other concerns, there is a process for raising these issues, including the opportunity for a conference with an EPA Regional Judicial Officer, described below.

There are some steps you must take quickly to comply with the enclosed Order

Under the terms of the Order, the Order is effective November 16, 2017 unless the City requests a conference or submits written materials as described in Section VIII (Effective Date) of the Order. The opportunity to confer is discussed below in this letter and in Section VII (Opportunity to Confer) of the enclosed Order. If the City submits written materials or requests a conference, the Effective Date will be extended as described in Section VIII (Effective Date) of the Order.

Note, that, as described below, the City will have the opportunity for a full, unabridged conference with a Regional Judicial Officer under the terms of the Order; however, we are asking that the City act quickly and make any request by November 13, 2017, with respect to the opportunity to confer under the Order. There are two reasons for this:

- 1) First, it is important that EPA's oversight of the operation and maintenance of the remedy begin quickly. As stated in EPA's Five-Year Review of the Site remedy (September 2016), based on information in the New Mexico Office of the State Engineer Water Rights Reporting System database (*i.e.*, well permit records) and the NMED Drinking Water Bureau Safe Drinking Water Information System database, a broad estimate of 106,000 people may be served by public water supply and private/domestic wells within a 4-mile radius of the Site. As noted above in this letter, EPA's Five-Year Review found shortcomings in the City and County's evaluation of the effectiveness of the City and County's ground water extraction and treatment system in protecting this vital aquifer. In particular, the City and County had not effectively determined whether the system had attained hydraulic capture of the PCE contaminant plume—keeping it from polluting unaffected areas, nor had the City and County adequately determined the extent to which the system had reduced the PCE concentrations within the plume to below the MCL drinking water standard. The City and County's sampling has improved, but with ground water as the sole source of drinking water for Las Cruces, EPA direct oversight of operation and maintenance at the Site must begin quickly to ensure that the contamination does not spread.

- 2) In addition, the City has been aware of the issues addressed by the Order for some time. EPA's concerns regarding operation and maintenance of the extraction and treatment system, including sampling and analysis issues, have been before the City and County at least since the Five-Year Review, issued in September 2016. Moreover, the Statement of Work that essentially sets forth all the work requirements of the Order (*see* Order at Appendix B) is based on the draft statement of work that that EPA has been developing with input from the City and County for years, as part of settlement negotiations. The City has received unilateral administrative orders before regarding the Site and EPA has described EPA's reasons for applying the order, the factual findings and determinations on which the Order is based, and, in years of settlement negotiations, we have extensively discussed the appropriateness of the Operation and Maintenance actions that the Order requires the City to take, as documented in the Statement of Work.

In short, the conference that the Order makes available to the City is a complete conference, and there is no limit on document submission as described in the Order; nonetheless, due to the exigencies of the situation and due to the familiarity of the situation to the City, we are requiring that the City act quickly, as explained further below and in Section VII (Opportunity to Confer) of the Order.

Please note that Section IX (Notice of Intent to Comply) of the Order requires the City to notify EPA on or before the Order's Effective Date of the City's intent to comply with the Order. The City should notify EPA as described in Section IX (Notice of Intent to Comply) of the Order.

EPA will not use Section 122 negotiation procedures

Section 122(a) of CERCLA, 42 U.S.C. § 9622(a), directs EPA to employ its settlement procedures "[whenever practicable and in the public interest] to facilitate agreements ... that are in the public interest and consistent with the National Oil and Hazardous Substances Contingency Plan in order to expedite effective remedial actions and minimize litigation." Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), provides that EPA shall negotiate settlements with responsible parties whenever the Agency determines that "a period of negotiation... would facilitate an agreement with potentially responsible parties for taking response action... and would expedite remedial action." EPA has determined, however, that use of the settlement procedures set forth in Section 122 of CERCLA would not be in the public interest at this time and would not facilitate an agreement between EPA and the City of Las Cruces or Doña Ana County regarding the completion of response actions at the Site. More negotiations regarding completion of the response action at the Site would not be in the public interest because, as explained above in this letter, EPA wants to quickly begin oversight of the monitoring of the contaminated plume at the Site to ensure that monitoring remains consistent. In addition, after years of protracted negotiations regarding completion of the work, it is clear that the best way to get the work done is to work together under a unilateral administrative order. EPA and the City and County have worked well together under the unilateral administrative order for Remedial Design and the unilateral administrative order for construction of the extraction and treatment system. We see no reason why we cannot work well together again. We hope you agree. Note that EPA's decision not to use the Section 122 settlement procedures is not subject to judicial review.

Opportunity to confer

As provided in Section VII (Opportunity to Confer) of the enclosed order, within five days (as “days” are defined in the Order) after the date the Order was signed by the EPA Region 6 Superfund Division Director (*i.e.*, by November 13, 2017, under the terms of the Order), the City may, in writing (including by email), request a conference with an EPA Regional Judicial Officer (the signature and date is on page 33 of the enclosed Order). Since the Order was signed November 6, this means your written (including email) request must be made by November 13. The purpose of the conference is to discuss the Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions the City is ordered to take, or any other relevant and material issues or contentions that City may have regarding the Order. Any request for a conference, or written comments or statements should be submitted in writing (including by email) to:

James E. Costello, Practice Group Leader (6RC-S)
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733
costello.james@epa.gov

Please see Section VII (Opportunity to Confer) of the Order for more information about this conference. If you have questions, you may reach Mr. Costello at 214-665-8045.

The EPA appreciates the cooperation that we have received from the City of Las Cruces and Doña Ana County regarding the cleanup of the Site. If you have any questions, please call Mr. Costello at (214) 665-8045.

Sincerely yours,

Carl E. Edlund, P.E.
Director, Superfund Division

Enclosure

cc: Ms. Jenifer Hower – General Counsel, New Mexico Environment Department
Ms. Marcy Driggers – Attorney for the City of Las Cruces
Ms. Jessica Ferrell – Attorney for the City of Las Cruces
Mr. Brad Marten – Attorney for the City of Las Cruces
Mr. David Wood – Attorney for the City of Las Cruces

6RC-S:Costello:9/29/17:GriggsWalnutCOVER COUNTY 11-5-17 jcB

SF-RL	SF-RL	SF-R	SF-TE	SF-TE	SF-TE	RC-S	SF
Purcell	Atkins	Meyer	Eppler	Johnson	Banipal	Peycke	Phillips